

2:03-cv-02462-UWC

1. On or about September 23, 2002, Plaintiff Roland Allen and his wife, Lucille Allen, jointly purchased a new 2003 Chevrolet Malibu (“the Malibu”) from Serra Chevrolet, Inc. (“Serra”), in Birmingham, Alabama.
2. The Malibu was manufactured by Defendant General Motors Corporation (“GM”).
3. Under its manufacturer’s new vehicle warranty, GM warranted that the Malibu was free of defects in materials or workmanship, *i.e.*, that the vehicle was merchantable.

4. After driving the Malibu, Plaintiff noticed that it emitted an unpleasant odor. Plaintiff complained of the odor to sales representatives of Serra.

5. Serra service representatives adjusted the air conditioning system of the Malibu and thereby corrected the problem on the day of Plaintiff's purchase of the vehicle.

6. Since purchasing the Malibu, Plaintiff has driven it over 44,000 miles.

7. Although Plaintiff took the vehicle to Edwards Chevrolet of Birmingham, Alabama ("Edwards") with complaints of an intermittent foul odor, among other things, Edwards was unable to eliminate the alleged odor. On one occasion, it removed the cowl and cleaned the air conditioning evaporator of the Malibu. But Edwards never detected any manufacturer's defect in the ventilation system of the Malibu.

8. There is no credible evidence of any manufacturer's defect in the ventilation, air-conditioning, or heating systems of the Malibu. The only evidence of such defect is the testimony of the Plaintiff, which the Court does not credit.

9. Plaintiff has not given written notice to GM of any defect in the ventilation system of the Malibu.

II.

Based on the foregoing Findings of Fact, the Court hereby enters its Conclusions of Law.

1. Plaintiff has totally failed to carry his burden of proof of a manufacturer's defect in the vehicle which he purchased from Serra Chevrolet and manufactured by Defendant GM.

2. Defendant GM is entitled to judgment in its favor on the claims of Plaintiff.

By separate order, judgment will be entered in favor of Defendant and against Plaintiff.

Done this 29th day of April, 2005.

A handwritten signature in black ink, appearing to read "U.W. Clemon", written over a horizontal line.

U.W. Clemon
Chief United States District Judge